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Supreme Court of the United States

OCTOBER TERM, 1944

No. 1168

ALBERT C. DULANEY, PETITIONER,

versus

M. COPPARD, TRUSTEE, RESPONDENT.

Petition for Writ of Certiorari

TO UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.

Brief for Petitioner.

ALBERT C. DULANEY,
Petitioner.

LODOVIC PRINTING CO., SAN ANTONIO, TEXAS

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BRIEF FOR PETITIONER

Your petitioner, Albert C. Dulaney, states that this petition for review by issuance of Writ of Certiorari to United States Circuit Court of Appeals for the 5th Circuit is accompanied by certified transcript of record in the case, proceedings in the District Court being shown by agreed statement of the case under Federal Rule No. 76, said transcript also including the proceedings in said United States Circuit Court of Appeals, 5th Circuit, to which Court the writ is asked to be directed so that this Court

may pass on the question of the validity of a pretended order of the referee of December 9, 1942, attempting to give 90 days more time for further examination of bankrupt herein and for filing objections to discharge, greatly damaging owners of assets being handled by bankrupt.

There was no special cause shown in any legal way to the bankruptcy court for any further examination of any witness, the void order being without any notice, without any opportunity to be heard, without due process of law, being not granted by the court but being an attempted and pretended judicial act of the court in a private proceeding like the Court of Star Chamber, all in secret and railroaded through without his day in court to anyone, the request being made by creditors without first requesting the trustee so to do, the trustee alone having the right to ask for an extension of time by an order "granted by the court", the creditors in question having taken no part in the proceedings except to file their claim, vital rights of those whose assets were tied up unjustly, unlawfully, and illegally by the bankruptcy court in reckless disregard of the rights of the owners of these assets, who were not before the court, no hearing of any kind being given to anyone, no evidence being considered, not even an affidavit, no argument, all being the pretended act of the referee alone and in secret in the signing the papers sent by mail to said referee, the referee being disqualified to act in extending the time in this way because under the law he could receive commissions if he held the assets of others to belong to bankrupt personally, but not being entitled to such commissions in case he decided that these assets did not belong to the bankrupt personally, but to others for whom he had been handling them for many years in the capacity of either trustee or attorney, referee by subpoena duces tecum issued November 20, 1942 attempted to force bankrupt

three days later to produce all books of accounts, records and documents showing assets held by him personally or as attorney or trustee or otherwise by seeking to force the disclosure of privileged matter held by all reputable attorneys as sacredly confidential.

At the first meeting of creditors held September 29, 1942 the regular examination of bankrupt provided by the law was held and at the end of such examination participated in by all creditors, or their attorneys, desiring to examine, the referee in open court announced December 10, 1942 as the date fixed within which objections to discharge could be filed, thus giving 73 days for examination of bankrupt and for the filing of such objections, the question of the validity of such void, pretended and alleged order being raised by a motion to set aside same, made to the referee promptly after the secret order became known to bankrupt. A firm of creditors of Dallas, Texas sent in by mail an unverified motion for an extension of time without having taken part in any of the proceedings and without knowing whether or not an extension of time was necessary, without making any request of the trustee for such extension, trustee never having asked for such extension although primarily the trustee alone could make such a motion, no notice being given to anyone, no hearing being had, not even by the makers of the motion, who, 300 miles away in Dallas, Texas, cocked their feet on a table in their law office and puffing a cigar at intervals, dictated to a stenographer the mail order motion supported by no evidence, not even an affidavit, without argument or chance to present the facts, or the law, by anybody, the whole proceeding being in secret in the referee's office like in the old Court of Star Chamber, the referee, as provided by Federal Statutes, being entitled to commissions on assets decided by the referee acting as the bankrupt court to be-

long to the bankrupt, but with no commissions to referee if he held these assets of others not to belong personally to the bankrupt, so that said referee was financially interested in holding the assets to belong to the bankrupt although all the proof showed that these assets had been handled for years by the bankrupt in his capacity as attorney or trustee as the property of others, the referee thereby by reason of financial interest being disqualified from acting or going through the farce of pretending to hand down a judicial decision in the matter, the referee's overruling of the motion to set aside the void order being carried to the District Court by petition for review, the District Court not going into the constitutional questions involved, and, upon appeal to the Circuit Court of Appeals, an opinion was handed down November 18, 1944, 145 Fed. (2d) 468, in which a short opinion was written without citing any of the decisions of the U. S. Supreme Court, any Circuit Court of Appeals, or any Federal District Court, going into the constitutional questions involved where a referee railroaded an extension order through in reckless disregard of the constitutional rights of bankrupt and others whose assets bankrupt was handling as attorney or trustee vitally and greatly injuring the owners of the property without any judicial act or proceeding of any kind being gone into by the bankruptcy court as a court, the opinion of the Circuit Court of Appeals being based on the idea that the Federal Statute did not make notice a condition of entering such order, entirely overlooking and disregarding the plain fact that the whole proceeding was a gross violation of the fundamentals of justice, a violation of the most elemental safeguards thrown around every American citizen to prevent him, or her, from being deprived of property without due process of law and without giving to such citizen his, or her, day in court to which each was entitled.

STATEMENT SHOWING JURISDICTION OF THE UNITED STATES SUPREME COURT. Section 240 (a) of Federal Act of February 13, 1925, Chapter 229, 43 Stat. 936, as amended by Act of May 22, 1939 found on Page 5 of Appendix to Revised Rules of Supreme Court of the United States, provided: In any case, civil or criminal, in a circuit court of appeals, * * * it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted * * * appeal.

Paragraph (c) provides: No judgment or decree of a circuit court of appeals * * * shall be subject to review by the Supreme Court otherwise than as provided in this section. The statement heretofore made shows that there is involved a matter of an administrative character presented in the ordinary course of the administration of a bankrupt estate, disputes relative to scope of examination under the act having been held to constitute a proceeding.

The gross disregard of even the fundamentals of justice and of even the rudiments of due process of law make it imperative that this court should issue its Writ of Certiorari herein so that for the first time the constitutional questions involved may be really gone into by this court and after a real judicial hearing these vital fundamentals of justice shall safeguard and be thrown around the citizen as provided by the peoples' fundamental law of the land; that they may shield and protect such citizens, especially defenseless women in need of medicines necessary to be purchased by funds tied up by the bankruptcy court for the purpose of paying commissions to the referee, the trustee, and a con-

tingent fee to the attorney for the trustee, such questions being presented herewith immediately, decision below being in conflict with applicable decisions of this court.

QUESTIONS PRESENTED AND REASONS RELIED ON FOR ALLOWANCE OF WRIT OF CERTIORARI HEREIN.

(1) The principle of bankruptcy law is elemental that after the bankrupt has presented himself for examination at the first creditors' meeting, where any creditor, or his attorney, may ask any relevant or legally competent question, thereafter there is no absolute right to examine anyone, the order for examination of any witness must be for a special cause shown only, the first creditors' meeting being one of the most important meetings held by the referee and a full and free right of examination being given to all creditors, or their representatives, and before the bankruptcy court shall order further examination of witnesses there must be a judicial determination of the necessity for such and by the stronger reason where 73 days have once been set aside at the first creditors' meeting to hold further examination of the bankrupt, a motion must be made by someone competent in law to make such a motion before there is any right to examine further witnesses in such proceedings, especially where the first meeting of creditors was held September 29, 1942 and the referee has permitted the proceedings still to be drawn out as late as March, 1945, more than 2½ years later, evidently for the purpose of wearing out those whose funds have been tied up by the referee yearning for commissions instead of working for a fee deposited, with the trustee situated exactly the same, and with the attorney for the trustee working for a contingent fee thereby creating a community of interest on the part of the referee, the trustee, and his attorney like

unto the Three Guardsmen who were "all for one and one for all."

(2) Every step in a judicial proceeding and before a referee in bankruptcy must be after reasonable notice and an opportunity to be heard, or such order is invalid and void because not based on due process of law, contrary to the fundamentals of justice and denying to those affected the constitutional right of having each his day in court.

(3) An extension of time sought to be given by the void order, under the express provisions of the statute, Bankrupt Act of 1938, section 14 b, can be based only on an extension of time "granted by the court", requiring reasonable notice, hearing and all the other requisities of due process of law.

(4) No creditor can make a motion for such extension of time without first requesting the trustee so to do, a creditor having no right even to ask for such extension unless he first requests the trustee to make the motion for such extension of time, all being based on the idea that the creditors are like the stockholders of a corporation having no right to interfere with the directors as long as they are managing the corporation properly, the Trustee in bankruptcy being in the position of the board of directors.

(5) The creditors who attempted to make the motion for extension of time having taken no further part in the bankruptcy proceedings except to file an alleged claim were guilty of laches, having slumbered on their rights by not taking part in any examination, not appearing at the first creditors' meeting where every creditor personally, or by attorney, is given the right to examine, no attempt being made to examine during the 73 days thereafter granted by the referee in open court these mail order creditors in

Dallas could not come in at the last minute and ask for an extension of time to examine when they had made no effort to take part in any way at the continued examinations had on September 29, 1942 and from time to time after that date until December 10, 1942, a total period of 73 days, three minutes examination of the books brought into bankruptcy court being sufficient to show that at the time the petition was filed and at the time of the adjudication bankrupt had no assets not exempt, and three hours being ample time to examine the one column showing what belonged to bankrupt from the beginning period of keeping the books sometime about the year 1930 or 1931 clear through to said first creditors' meeting of September 29, 1942.

(6) The pretended, alleged and void order is void, unconstitutional and not due process of law because there was no notice to anyone although vital rights of owners of assets handled for them by bankrupt for years being affected materially and disastrously by reason of a long drawn out examination for the purpose of wearing out those whose property was being handled by bankrupt as trustee and attorney, one of the owners being a frail woman at death's door, the examinations being all for the purpose of enabling commissions to be collected.

(7) Pretended order is void and contrary to due process because there was no hearing of the motion given to anyone, not even to the creditors themselves—the mail order makers of the motion.

(8) Alleged order is void, unconstitutional, not due process of law and not even a judicial act because not based on any evidence * * * not even an affidavit * * * being a secret Star Chamber proceeding, the proceedings of which court, even in memory, raise a noxious stench in the nostrils of all Anglo-Saxon freedman.

(9) The alleged order is void, unconstitutional, not due process of law, not even a judicial act, being purely a farce and a tragic disregard of the peoples' fundamental law because there was no argument and no chance to present any facts, or the law, by anybody, not even by the makers of the motion themselves.

(10) Alleged order is void, unconstitutional, not due process of law, and not even a judicial act because the signing of the order was in secret—a public hearing being necessary to all judicial proceedings.

(11) Alleged order is void, unconstitutional, not due process of law, and not even a judicial act because the referee, who passed on the validity of the order of December 9, 1942, after motion had been made to set aside such void order, could get pay for his work only by holding the assets of others handled for many years by bankrupt as Trustee and Attorney to be the individual property of bankrupt so that the referee and trustee could thereby receive commissions provided by law on such assets, and trustee's attorney would receive a contingent fee, the referee being therefore disqualified to grant any such extension.

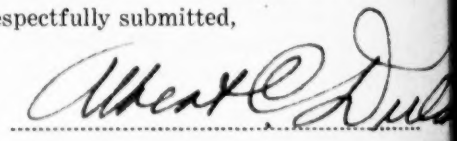
(12) Subpoena duces tecum was issued November 20, 1942, requiring bankrupt to produce at the hearing before the referee three days later all books of accounts, records, and documents showing his individual personal financial condition as attorney, trustee or otherwise thereby seeking to force the bankrupt by judicial process to disclose privileged matters which an attorney has no right to disclose, the disclosure of which by any attorney would show him to be unworthy of his sacred trust.

Attached to this petition and application is a concise brief showing that the pretended extension order was void,

unconstitutional, not due process of law, and a farce of a pretended judicial proceeding, the opinion of the lower court, showing that the above constitutional questions involving the validity of the extension order, should have been gone into carefully by any court seeking to act judicially, especially where important rights of others are involved, thereby giving to everyone his day in court to which he is entitled, all of which is clearly evident through a reading of the opinion of the lower court, and said opinion was also clearly written without, in any wise, going into the fundamentally important question as to whether any judicial officer, judge, court or bankruptcy court, could enter a valid order when a decision one way would make cash commissions for himself while if he decided the other way he would get no pay, this being a fundamental constitutional principle involved in the celebrated Tumey case, opinion being written for the United States Supreme Court by one of its great Chief Justices, William Howard Taft.

Petitioner prays and makes application that the court issue its Writ of Certiorari so that for the first time the vitally fundamental and important constitutional questions shall be gone into judicially and fairly by this court.

Respectfully submitted,



ALBERT C. DULANEY,
Petitioner.